

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

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**DECLARATION OF TERRY J. KILPATRICK IN SUPPORT OF EX PARTE  
APPLICATION TO ENLARGE THE TIME TO RESPOND TO DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT AND TO EXCLUDE  
EXPERTS (MDL Pacer Docket Nos: 522-529).**

I, **TERRY KILPATRICK**, declare:

1. I am an attorney licensed to practice law in the State of California, and employed by the Ernst Law Group, counsel for Plaintiffs Kathy McCornack, Daniel McCornack, and Ralph McCornack in the above-captioned action and related proceedings in MDL No. 1968. I submit this declaration in support of Plaintiffs' Ex Parte Application to Enlarge the Time to Respond to Defendants' Motions, PACER Docket Nos. 522-529. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I would testify in accordance with this declaration.

2. I have reviewed all of the pending Motions filed by Defendants in both the MDL proceeding (*In re Digitek*, 08-md-1968) and my client's individual case (*McCornack v. Actavis*, 09-cv-0671). In my opinion, and based on my 19 years of experience drafting and responding to motions, the Motions filed by Defendants are legally and factually intensive and I anticipate that significantly more time than 2 weeks will be required to review the cited documents, review and locate supporting documents, and draft affidavits and a response. Defendants' Motions

reference thousands of pages<sup>1</sup> from a database of roughly one-million pages along with references to numerous deposition transcripts and expert reports. In addition to these records, I anticipate having to pore through tens of thousands of disorganized records produced by Defendants<sup>2</sup>, discovery responses, and deposition transcripts of many other witnesses and defense experts to collect the facts needed to rebut the Defendants' allegations and prove that a genuine factual dispute does exist between the parties and that trial is warranted. Because the only two active cases at this point are the *McCornack* and *Vega* cases, I anticipate that most if not all of the work will be performed by the attorneys from this office and the Law Offices of Williamson and Rusnak.

3. I and my co-counsel Don Ernst contacted defense attorney Matthew Moriarty on Monday August 1, 2011 after receiving his clients' "General Background Statement" and attached documents. Mr. Moriarty stated he was unwilling to discuss any request for a Joint Stipulation to Enlarge Time until after he had filed his motions. Two days later, I received the e-mail which is attached to Plaintiffs' Ex Parte Application as Exhibit 1.

4. I will be filing a similar ex parte application in my client's case *McCornack v. Actavis*, Case No. 09-cv-0671.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on August 5, 2011 in San Luis Obispo, California.

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<sup>1</sup> See e.g. the 72 exhibits Defendants' submitted as PACER Docket Nos. 523.1 through 522.72 consisting of thousands of pages of documents.

<sup>2</sup> The records produced by Defendants are not logically organized and there is no easy way to find relevant documents. For example, Defendants fault Plaintiffs experts for not reviewing all of the batch records of 152 batches of Digitek, but the batch records are not sequentially numbered even for a single batch, much less each batch and it is and will be a Herculean task to locate documents need to oppose Defendants' Motions.

Dated: August 5, 2011

/s/ Terry Kilpatrick  
Terry Kilpatrick (CA. SBN 163197)  
Attorneys for Plaintiffs  
Ernst Law Group  
1020 Palm Street  
San Luis Obispo, CA. 93401  
Tel: 805-541-0300  
Fax: 805-541-5168  
E-mail: tk@ernstlawgroup.com